IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 13 of 1986

HONOURABLE MR.JUSTICE KS JHAVERI

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N C SHAH - Appellant(s)
Versus
M N KANSARA & 2 - Defendant(s)

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Appearance :
MR KF DALAL for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 2.
MR PV NANAVATI for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 22/08/2006

ORAL JUDGMENT

1. This appeal is directed against the judgement and order dated 18th March 1985 passed by the Motor Accident Claims Tribunal No.IV (Main), Ahmedabad City, in M.A.C.T. Application No.50 of 1984 whereby the said application came to be dismissed.

2. The case of the claimant was that on 17th August 1983 he was traveling on his scooter from A.G.Circle towards Samarpan. At that time a bus belonging to the respondent no.2 came behind the applicant's scooter and tried to take a

turn without giving any signal. As a result of this, the rear portion of the bus collided with the scooter and the applicant had sustained injuries. He therefore filed the aforesaid claim petition which came to be dismissed.

3. Learned Advocate for the Appellant argued the matter at length and submitted that the driver of the bus should have been more careful; that looking to the impact of the accident, it would establish that the appellant was not negligent and that the compensation as found by the Tribunal is on the lower side under various heads.

4. I have gone through the record of the case minutely. The issue no.2 was whether the original opponent nos.1 and 2 prove that the appellant was guilty of negligence. This issue was answered in affirmative. In this regard it would be relevant to quote the relevant observation of the Tribunal as under:

> "Thus, there was reasonable distance when the turn was being taken and hence it was his duty to control his scooter in such a way whereby no collision can taken place. There was enough kachha road and enough space whereto the scooterist could have maneuvered his scooter. Thus, in the absence of any other evidence adduced by the applicant what emerges is that for the accident the bus driver, 1st opponent was not responsible as he is not shown to have shown any negligence or carelessness. On the contrary it bears out that the speed of his bus was very slow, he had given signal before taking turn and it was thereafter due to negligence of applicant himself that the collision was caused by him against the rear portion of the of the bus and as such the 1st and 2nd opponents have proved that the applicant himself was guilty of negligence in causing the accident. In that view of the matter Issue No.1 is

answered in the negative, whereas Issue No.2 in the affirmative."

5. Learned Advocate for the appellant is not able to show anything from the record that the appellant was not negligent and the accident was caused solely due to the negligence of the driver of the offending bus and to reverse the aforesaidfinding. Therefore, the finding that the appellant is guilty of negligence in causing the accident cannot be reversed.

6. In view of the find that the applicant was guilty of negligence in causing the accident, it is not necessary to go into the aspects of compensation under various heads. Even then I have considered the submissions advanced in this regard and I am of the view that the Tribunal has considered all the aspects of the matter and it cannot be said that the awarded amount is on the lower side under any head.

7. In the premises aforesaid I do not find any merits in the appeal and the same is accordingly dismissed. No order as to costs.

[K.S. JHAVERI, J.]

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